

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1309

Introduced by Assembly Member Goldberg

February 21, 2003

An act to add ~~Section 35276 to Article 9.5 (commencing with Section 35277) to Chapter 2 of Part 21 of the Education Code~~, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, as amended, Goldberg. Eminent domain: displaced residential ~~or commercial~~ development.

Existing law authorizes the governing board of a school district to acquire by eminent domain any property necessary to carry out any of the powers and functions of the board.

This bill would, ~~in addition,~~ authorize the ~~board~~ *local governing agency, as defined*, to acquire ~~by eminent domain any~~ property ~~necessary to replace existing residential or commercial development dwelling units displaced by school construction if certain conditions are met and would require that displaced persons be given a right of first refusal to purchase or rent the replacement dwelling units.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 35276 is added to the Education Code,~~
2

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 (i) *Many cities in California face severe housing shortages.*

4 (ii) *Residents of these cities are often unable to find affordable*
5 *housing, and must pay far more than they can afford for scarce and*
6 *often substandard housing.*

7 (iii) *School construction projects in crowded urban areas often*
8 *result in a loss of affordable housing units.*

9 (iv) *Creating affordable replacement housing in crowded urban*
10 *areas impacted by new school construction is a compelling*
11 *community need.*

12 (v) *To the extent possible, school districts and local*
13 *governments should work together to coordinate and facilitate the*
14 *construction of replacement housing when residents are displaced.*

15 (vi) *To the extent possible, the replacement housing should be*
16 *built in the residents' existing neighborhoods.*

17 (vii) *The state should facilitate and encourage collaboration*
18 *between school districts and local governments.*

19 SEC. 2. *Article 9.5 (commencing with Section 35277) is*
20 *added to Chapter 2 of Part 21 of the Education Code, to read:*

21

22 *Article 9.5. Schoolsite Replacement Housing*

23

24 35277. *For purposes of this article the following terms have*
25 *the following meanings:*

26 (i) *"Extreme shortage of affordable housing" means the*
27 *residential housing condition that exists where, for 10 percent or*
28 *more of all dwelling units within the vicinity of a new schoolsite,*
29 *the occupancy rate equals or exceeds 1.5 persons per habitable*
30 *room. For the purposes of this paragraph "habitable room" shall*
31 *have the same meaning as set forth in the California Building*
32 *Standards Code.*

33 (ii) *"Local governing agency" means a city in which a new*
34 *schoolsite is located, or if a new schoolsite is located in an*
35 *unincorporated area, the county in which the new schoolsite is*
36 *located.*

37 (iii) *"New schoolsite" means real property acquired by a school*
38 *district on and after January 1, 2004, for construction of a new*
39 *schoolsite or for expansion of an existing schoolsite to be funded*



1 under Article 11 (commencing with Section 17078.10) of Chapter
2 12.5 of Part 10.

3 (d) “New schoolsite replacement housing” means housing to
4 replace the residential dwelling units demolished or to be
5 demolished in connection with a new schoolsite.

6 (e) “Vicinity of a new schoolsite” means the area within the
7 census tract in which a new schoolsite is located and the areas
8 within the immediately adjacent census tracts.

9 (f) “Affordable housing cost” and “affordable rent” shall have
10 the same meanings as set forth in Chapter 2 (commencing with
11 Section 50050) of Part 1 of Division 31 of the Health and Safety
12 Code as applied to persons and families of low or moderate
13 income.

14 (g) “Persons and families of low or moderate income” and
15 “persons and families of low income” shall have the same
16 meanings as set forth in Section 50093 of the Health and Safety
17 Code.

18 (h) “Very low income households” and “extremely low income
19 households” shall have the same meanings as set forth in Sections
20 50105 and 50106 of the Health and Safety Code.

21 35278. (a) If a school district has acquired a new schoolsite
22 containing residential dwelling units, the local governing agency
23 may, consistent with this article, acquire real property for the
24 purpose of new schoolsite replacement housing and utilize or
25 convey the property according to this article, if all of the following
26 conditions are met:

27 (1) The local governing agency has determined that an extreme
28 shortage of affordable housing exists in the vicinity of the new
29 schoolsite.

30 (2) The real property to be used for replacement housing is
31 acquired by the local governing agency in the vicinity of a new
32 schoolsite, or in an area designated in the local governing
33 agency’s replacement housing plan adopted pursuant to
34 paragraph (1) of subdivision (e), within two years of the school
35 district’s acquisition of a possessory right to the new schoolsite.
36 The two-year period may be extended pursuant to subdivision (g)
37 of Section 35279.

38 (3) The combined area of the real property to be used for
39 replacement housing acquired by the local governing agency
40 pursuant to this article does not include any portion of the new

1 *schoolsite and does not, in acreage, exceed 150 percent of the area*
2 *acquired by the school district for the new schoolsite.*

3 *(b) A local governing agency may rehabilitate, develop, or*
4 *construct residential facilities on the property for the purpose of*
5 *providing new schoolsite replacement housing as set forth in this*
6 *article.*

7 *(c) Notwithstanding Article 8 (commencing with Section*
8 *54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the*
9 *Government Code or any other provision of law, a local governing*
10 *agency that has acquired real property for new schoolsite*
11 *replacement housing pursuant to this article may convey the*
12 *property to an affiliated public agency for the purpose of providing*
13 *new schoolsite replacement housing. An affiliated public agency*
14 *that has acquired real property pursuant to this section may*
15 *rehabilitate, develop, or construct residential facilities on the*
16 *property for the purpose of providing new schoolsite replacement*
17 *housing in compliance with this article.*

18 *(d) Notwithstanding Article 8 (commencing with Section*
19 *54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the*
20 *Government Code or any other provision of law, a local governing*
21 *agency, or an affiliated public agency, that has acquired real*
22 *property for new schoolsite replacement housing pursuant to this*
23 *article, may sell, lease for no more than 99 years, jointly develop,*
24 *exchange, subdivide, transfer, assign, pledge, encumber by*
25 *mortgage, deed of trust, or otherwise, or otherwise dispose of the*
26 *real property or any interest in that property, or any portion*
27 *thereof, for the purpose of providing new schoolsite replacement*
28 *housing through the rehabilitation, development, or construction*
29 *of residential facilities or combined residential and commercial*
30 *facilities on that property.*

31 *(e) (1) Any disposition of real property acquired for new*
32 *schoolsite replacement housing pursuant to this article shall be in*
33 *furtherance of the replacement housing plan adopted by the local*
34 *governing agency, which shall meet all of the following*
35 *requirements:*

36 *(A) The replacement housing plan shall include all of the*
37 *following:*

38 *(i) A statement of the general location of housing to be*
39 *developed pursuant to this section.*

40 *(ii) A description of the means of financing the development.*

1 (iii) A finding that the actions to be taken pursuant to the plan
2 do not require approval of the voters pursuant to Article XXXIV of
3 the California Constitution, or that the approval has been or will
4 be obtained.

5 (iv) A specification of the number of dwelling units housing
6 persons and families of low income and persons and families of
7 moderate income, respectively, that are planned for construction
8 or rehabilitation.

9 (v) Provisions to ensure that persons displaced by the
10 acquisition of a new schoolsite, and the acquisition of a new
11 schoolsite replacement housing property pursuant to this article,
12 shall have a right of first refusal for the purchase or rental of
13 dwelling units developed in the replacement housing.

14 (vi) A description of any facilities for commercial use to be
15 constructed in combination with the replacement housing.

16 (B) The number of dwelling units to be developed on the
17 combined area of real property acquired pursuant to this article
18 will be equal to a prescribed percentage, as determined by the
19 local governmental agency, but in no event less than 75 percent,
20 of the number of dwelling units demolished or to be demolished in
21 connection with construction or expansion of school facilities on
22 the new schoolsite plus the number of dwelling units on the new
23 schoolsite replacement housing property to be acquired pursuant
24 to this article.

25 (C) A prescribed percentage, as determined by the local
26 governmental agency, but in no event less than 50 percent, of the
27 dwelling units developed on the property acquired for new
28 schoolsite replacement housing pursuant to this article shall be
29 available at affordable housing cost or affordable rent. The
30 number of the dwelling units need not exceed the number of
31 households of persons and families of low or moderate income
32 displaced by the acquisition of the new schoolsite and the
33 acquisition of property for new schoolsite replacement housing
34 pursuant to this article. This subparagraph does not prohibit a
35 local governing agency from requiring that all or any portion of
36 the dwelling units developed on property acquired for new
37 schoolsite replacement housing be available at affordable housing
38 cost or affordable rent to persons and families of low income, very
39 low income households, or extremely low income households. This
40 subparagraph does not prohibit a local governing agency from

1 *participating financially or otherwise to enable any housing*
2 *developed pursuant to this article to serve households of lower*
3 *income if the need for that housing is identified in, and consistent*
4 *with, the replacement housing plan.*

5 *(2) For a reasonable period of time prior to adopting the*
6 *replacement housing plan, the agency shall make available a draft*
7 *of the proposed plan for review and comment by public agencies*
8 *and the general public.*

9 35279. *(a) A school district that applies for site acquisition*
10 *funds for a project to construct a new schoolsite or to expand an*
11 *existing schoolsite under Chapter 12.5 (commencing with Section*
12 *17070.10) of Part 10 shall state in its application whether the*
13 *project has resulted, or will result, in the displacement of*
14 *individuals legally residing on the site and whether an extreme*
15 *shortage of affordable housing exists in the vicinity of the new*
16 *schoolsite.*

17 *(b) If, and only if, the school district's application states that the*
18 *acquisition of the project has resulted, or will result, in the*
19 *displacement of individuals legally residing on the site, and an*
20 *extreme shortage of affordable housing exists in the vicinity of the*
21 *new schoolsite, the school district shall comply with subdivisions*
22 *(c) and (d).*

23 *(c) The school district shall do either of the following:*

24 *(1) Subject to subdivisions (d) and (e), the school district shall*
25 *pay to the local governing agency, for the purposes of funding*
26 *replacement housing, an amount equal to the lesser of either of the*
27 *following:*

28 *(A) Ten thousand dollars (\$10,000) per household displaced.*

29 *(B) The per household subsidy amount, if any, most recently*
30 *determined by the Department of Housing and Community*
31 *Development, pursuant to the multifamily housing program*
32 *applicable to the county in which the new schoolsite is located, for*
33 *the unit size and affordability level appropriate to the displaced*
34 *household based on the occupancy standards used by the local*
35 *housing agency receiving the funds.*

36 *(2) The school district or its designee shall, pursuant to this*
37 *article, develop and construct dwelling units on the property*
38 *acquired for new schoolsite replacement housing at least equal in*
39 *number to the number of dwelling units demolished in connection*

1 *with construction or expansion of school facilities on the new*
2 *schoolsite.*

3 *(d) If the school district or its designee pays the local governing*
4 *agency pursuant to paragraph (1) of subdivision (c), in no event*
5 *shall the total amount provided to the local governing agency for*
6 *any new schoolsite replacement housing pursuant to this section*
7 *exceed four hundred fifty thousand dollars (\$450,000).*

8 *(e) For applications for state funding of school facilities that*
9 *are submitted prior to January 1, 2008, subdivision (c) does not*
10 *apply if the school district certifies that both of the following*
11 *conditions exist:*

12 *(1) Then amount of the local bonds authorized by the voters for*
13 *that school district for construction, rehabilitation, and equipping*
14 *of school district facilities, or acquisition or lease of real property*
15 *for purposes of subdivision (c), do not include the replacement*
16 *housing costs associated with those applications.*

17 *(2) After diligent effort, the school district has been unable to*
18 *obtain adequate replacement housing funds from other public*
19 *agencies to fulfill the requirements of subdivision (c).*

20 *(f) The school district shall make any payments required under*
21 *this section within six months from the date the school district*
22 *commences demolition on the new schoolsite.*

23 *(g) If the local governing agency receives funds from the school*
24 *district pursuant to paragraph (1) of subdivision (c), the time*
25 *period specified in paragraph (2) of subdivision (a) of Section*
26 *35278 shall terminate 180 days after the receipt of the funds by the*
27 *local governing agency, or two years after the school district*
28 *acquired a possessory right to the new schoolsite, whichever event*
29 *occurs later.*

30 *(h) If funds paid pursuant to this section for a new schoolsite*
31 *are not encumbered within two years of their receipt by the local*
32 *governing agency for either the acquisition of property for*
33 *replacement housing pursuant to Section 35278, or for the*
34 *construction of affordable residential housing in the vicinity of the*
35 *schoolsite or in an area designated by a replacement housing plan*
36 *pursuant to paragraph (1) of subdivision (e), those funds shall be*
37 *paid by the local governing agency as follows:*

38 *(1) If the local governing agency is a city, the funds shall be*
39 *paid by the local governing agency to the county in which the local*
40 *governing agency is located for use in affordable housing projects.*

1 (2) *If the local governing agency is a county, the funds shall be*
2 *paid by the local governing agency to the Department of Housing*
3 *and Community Development for use in affordable housing*
4 *projects.*

5 (i) *If funds paid to a county pursuant to paragraph (1) of*
6 *subdivision (h) are not encumbered within two years of their*
7 *receipt by the county for either the acquisition of property for*
8 *replacement housing pursuant to Section 35278, or for the*
9 *construction of affordable residential housing in the school*
10 *district, the funds shall be paid to the Department of Housing and*
11 *Community Development for use in affordable housing projects.*

12 ~~to read:~~

13 ~~35276. (a) The governing board of any school district may~~
14 ~~acquire by eminent domain any property necessary to replace~~
15 ~~existing residential or commercial development displaced by~~
16 ~~school construction if the school district has acquired real property~~
17 ~~to be used for purposes of school facilities construction or~~
18 ~~expansion, and that acquisition has directly resulted, or will result,~~
19 ~~in the displacement of existing residential or commercial~~
20 ~~development.~~

21 ~~(b) The number of dwelling units developed on the acquired~~
22 ~~real property shall be equal to the sum of the number of dwellings~~
23 ~~occupied by the displaced persons moving from the property~~
24 ~~acquired for purposes of constructing or expanding school~~
25 ~~facilities plus the number of dwelling units occupied by persons~~
26 ~~legally residing on the property to be acquired for replacement~~
27 ~~housing.~~

28 ~~(c) The dwelling units developed on the property shall be~~
29 ~~maintained at rents as affordable to the occupants of the dwelling~~
30 ~~units displaced by the acquisition of the property for construction~~
31 ~~or expansion of the school facilities as those rents that the~~
32 ~~occupants paid immediately preceding the acquisition by eminent~~
33 ~~domain.~~

34 ~~(d) Notwithstanding any provision of this title to the contrary,~~
35 ~~the conveyance of the property for the construction of replacement~~
36 ~~facilities is not subject to the requirements of Article 4~~
37 ~~(commencing with Section 17455) of Chapter 4 of Part 10.5 or any~~
38 ~~other provisions of law regulating the disposition of surplus school~~
39 ~~property. After the school district acquires the real property for~~
40 ~~replacement of existing residential or commercial development,~~

1 ~~the school district may dispose of such property in any of the~~
2 ~~following ways:~~

3 ~~(1) Convey the property for fair market value to a private~~
4 ~~developer in the manner required by law for the purpose of~~
5 ~~constructing replacement facilities on that property.~~

6 ~~(2) Enter into a joint venture with a private developer pursuant~~
7 ~~to the requirements of Article 5 (commencing with Section 17060)~~
8 ~~of Chapter 12 of Part 10. Under the terms of the joint venture, the~~
9 ~~school district may convey the property for fair market value to the~~
10 ~~private developer for the purpose of constructing replacement~~
11 ~~facilities on the property.~~

12 ~~(3) Convey the property for fair market value to the owner of~~
13 ~~any property adjacent to the school site, if the owner of the property~~
14 ~~agrees to construct the replacement facilities and to set aside a~~
15 ~~portion of the property for park, recreation, and open space~~
16 ~~purposes.~~

